

Order 97-2-22

Served: March 3, 1997

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 25th day of February, 1997

Application of :
: **AIR JAMAICA LIMITED** : DOCKET OST 96-1881
:
for extension of exemption and request for :
shortened answer period :

ORDER

Summary

By this order, we extend Air Jamaica Limited's exemption to conduct scheduled combination operations between New York, New York, and Atlanta, Georgia, on the one hand, and Barbados, on the other, via the intermediate points Antigua and Barbuda and St. Lucia, for 30 days. This authority was last granted by Order 96-11-30 and is limited to operations conducted under wet lease by a duly authorized and properly supervised U.S. or foreign carrier.

Background

On October 18, 1996, Air Jamaica requested an exemption for two years to conduct the extrabilateral operations described above. Amerijet International, Inc., answered and stated that comity and reciprocity did not support grant of the request. Specifically, Amerijet stated that it was unable to secure facilities at Jamaican airports from the Airports Authority of Jamaica (AAJ) and to self-handle its cargo, a bilateral right.

By Order 96-11-30, the Department found that it was in the public interest to grant Air Jamaica's request for a 90-day period (which expires February 25, 1997) and to defer on the remainder. In taking that action, the Department stated, in part, that positive action would make possible use of bilateral rights for Barbados. Further, we stated that we are sensitive to the concerns of Barbados and of the intermediate points served, whose

economies are reliant on tourism. In regards to Amerijet, the Department stated that it had engaged in diplomatic efforts to address that carrier's issues and had gotten assurances from the AAJ that it would meet with Amerijet to review the carrier's requirements for warehouse space. Further, the AAJ stated that it would use its good offices in negotiations between Amerijet and competing ground handlers in Jamaica. Finally, the Department stated that it would assess Amerijet's situation in Jamaica on an ongoing basis.

Additional Filing

On February 13, 1997, Air Jamaica requested renewal of the authority granted it by Order 96-11-30 for two years.¹ In support, Air Jamaica stated that it has vigorously pursued a resolution of Amerijet's issues with the Governments of the United States and Jamaica (GOJ), and with Amerijet; that it has presented a proposal to Amerijet by which that carrier could self-handle its cargo and would obtain warehouse space at the Kingston Airport and that Amerijet is presently considering Air Jamaica's proposal; that in the interim, Air Jamaica would work with Amerijet to develop a sub-lease agreement; and that Amerijet informed Air Jamaica that it did not currently intend to provide cargo service at Montego Bay.

Subsequent Pleadings

By its answer of February 21, 1997, Amerijet stated that comity and reciprocity with Jamaica do not support grant here since Amerijet still does not have the bilateral right to self-handle through its own facilities at Kingston or Montego Bay; that Amerijet met with the GOJ and with Air Jamaica in December 1996, but that no resolution of its issues resulted from these meetings; that there is still no recognition by the GOJ or Air Jamaica that Amerijet has a bilateral right to self-handle; and that the relevant traffic need is being met by BWIA International Airways.

Air Jamaica replied on February 24, 1997, and stated that on February 11, it presented Amerijet with a proposal to self-handle in space subleased by Air Jamaica to Amerijet at the Kingston airport; that Amerijet has not responded to that proposal, to date; that

¹ Air Jamaica also requested that the answer period be shortened to February 18, 1997 (answers to Air Jamaica's request would normally be due on February 28, 1997). By Notice of February 19, 1997, the Department required that answers be filed by noon, February 21, 1997, and that replies be filed by noon, February 24, 1997. Although Air Jamaica styled its February 13 submission as an application for renewal, since by Order 96-11-30 we had deferred rather than dismissed the balance of its original request, we have chosen to treat its submission as a supplement to that request, filed in support of extension of the previously awarded authority.

Amerijet has made conflicting statements about its readiness to commence cargo operations at Montego Bay; and that Air Jamaica cannot go forward with a proposal for Amerijet to self-handle at Montego Bay as long as that carrier fails to respond to Air Jamaica's outstanding request for the terms that Amerijet would require.

On February 24, 1997, Amerijet filed a response to Air Jamaica's reply and a motion to file. We will grant Amerijet's motion.

Decision

We have decided to extend the authority granted by Order 96-11-30, for 30 days. We find that our action is in the public interest.

Since issuance of Order 96-11-30, the Department has met with the GOJ regarding Amerijet's issues raised in this docket. Additionally, Amerijet has met with the GOJ and with Air Jamaica on these matters. It is our understanding that negotiations between the affected parties are continuing. We view these as positive steps and, under these circumstances, we are not disposed to withhold continuation of the authority. Further, as was the case in Order 96-11-30, we recognize that our action permits the use of Barbados' bilateral rights and we remain sensitive to the concerns and service needs of Barbados and the intermediate points served.

Saying this, we nevertheless recall the extrabilateral nature (as for Jamaica) of the Air Jamaica authority at issue and voice our concern that, at this time, Amerijet's issues remain unresolved. It is the Department's desire that such resolution be reached quickly. Therefore, while we are prepared to extend Air Jamaica's authority, we are not prepared to make that extension for the same 90-day duration of our earlier grant. Rather, we will limit the extension to a period of 30 days. This should enable us to assess even more closely the ongoing efforts to bring this matter to a satisfactory resolution.

In view of the above, we find that grant of the authority described here is consistent with the public interest, and that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

² We note that BWIA International Airways, Limited presently conducts services between New York, on the one hand and Barbados/Antigua and Barbuda/St. Lucia, on the other; however, no service is offered between Atlanta and those Caribbean points. (Source: February 1997 Official Airline Guide, Worldwide Edition.)

ACCORDINGLY,

1. We extend Air Jamaica Limited's exemption from the provisions of 49 U.S.C. section 41301, last granted by Order 96-11-30 in this Docket, in order for it to conduct scheduled foreign air transportation of persons, property and mail between New York, New York, and Atlanta, Georgia, on the one hand, and Barbados, on the other, via the intermediate points Antigua and Barbuda and St. Lucia;
2. This authority shall be effective during the 30-day period beginning February 26 , 1997;
3. The authority granted above is limited to operations conducted under wet lease from a duly authorized and properly supervised U.S. or foreign carrier. Air Jamaica may not conduct the operations authorized here with its own aircraft and crew without further Department action;
4. To the extent not granted above, we defer action on Air Jamaica's request in this Docket;
5. The authority granted above is subject to the terms, limitations and conditions of Air Jamaica's foreign air carrier permit, as issued by Order 89-3-74;
6. We grant Amerijet International, Inc.'s motion of February 24, 1997;
7. We may amend, modify, or revoke this authority at any time and without hearing; and
8. We will serve a copy of this order on Air Jamaica Limited, Amerijet International, Inc., the Ambassador of Jamaica in Washington, D.C., the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation and
International Affairs

(SEAL)